THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.10153 OF 1999

DATED: 19-09-2007

BETWEEN

B. Joannes,
S/o. late B. Thomas,
Ex.Serviceman,
R/o. Gajuwaka,
Visakhapatnam.

...PETITIONER

AND

The District Collector,
Visakhapatnam and
others.

...RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus to declare the proceedings of the District Collector dated 23.10.1995 in R.C.No.5563/95 A.10 in revising the order of the earlier assignment made in his favour in proceedings D.R.No.222/85/A3 dated 18.01.1983. He submits that by the impugned order one acre of land is sought to be deprived from his enjoyment on the ground that one acre of land out of the five acres assigned in his favour has been encroached by the respondents

3 and 4, as such requested the Mandal Revenue Officer to regularize the encroachment by respondents 3 and 4 by issuing patta. Consequently, 50 cents of land has been assigned each in favour of respondents 3 and 4 by proceedings in R.C.No.279/95 SA dated 27.01.1996. The said orders resuming one acre of land from him and granting D-form patta in favour of respondents 3 and 4 are illegal, arbitrary and against the principles of natural

justice.

2. It is the case of the petitioner that he is an Ex.Serviceman and he has been in possession and enjoyment of 5 acres of Government Poramboke land in Sy.No.53 of Talarivanipalem and planted mango and cashew seedlings in the said extent. Pursuant to his application for assignment of the said five acres of land in his favour, the Tahsildar by proceedings in R.C.No.222/85 B2 dated 07.02.1976 assigned the said extent in his favour subject to payment of cost of trees, if any, the subdivision and cost of survey marks. D-form patta was issued subject to certain conditions that the land is not alienable but heritable; lands assigned shall be brought into cultivation within three years and cultivation shall be made by the assignee or the member of his family or with hired labour under the supervision of himself of a member of his family.

Thereafter, the Tahsildar, Sabbavaram by order in D.R.No.222/85 A3 dated 18.01.1983 issued D-form patta incorporating the changes in the village accounts, entering the name of petitioner. It is stated that the said land is situated in Talarivanipalem, H/o. Aganapudi village. When the provisional assignment was made Aganapudi Village was under the Anakapalli Taluk, after division of the Taluk and formation of Mandals, it came under the jurisdiction of Sabbavaram Mandal. Accordingly, the Tahsildar, Sabbavaram, issued D-Form patta and there are no two assignments but only assignment in respect of the aforesaid 5 acres of land.

3. If that be so, I am of the opinion that the contention of the respondents that the assignment made by order dated 18.01.1983 by the Tahsildar, Sabbavaram, is different from that of provisional assignment made by order dated 07.02.1976, is without any basis.

It is the case of the petitioner that he has been assigned five acres of land and that there are no two assignments. Therefore, the order of the District Collector in impugned proceedings dated 23.10.1995 indicating to the Mandal

Revenue Officer, Gajuwaka, to revise the order of earlier assignment made in favour of the petitioner is illegal, unsustainable and against principles of natural justice. Admittedly no notice has been issued but only on the report submitted by the Mandal Revenue Officer, the Collector passed the said revised orders and assigned 50 cents each in favour of unofficial respondents.

4. With regard to possession in respect of the said land, it is stated that the petitioner is in possession and that the suit filed by him in O.S.No.212 of 1990 was decreed whereas the suit filed by the unofficial respondents in O.S.No.68 of 1997 was dismissed by the District Munsif, Anakapalli. Therefore, it cannot be said that the petitioner is not in possession of the said land.

5. Having regard to the facts and circumstances of the case,
I am of the opinion that there is no justification on the part of the respondents in issuing the impugned orders.

The writ petition is accordingly allowed as prayed for.
There shall be no order as to costs.

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V. ESWARAIAH, J

September 19, 2007
DSK